

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

EUGENE S. GREENE

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article(x) 23 of the :  
Tax Law for the Year(s) ~~xxxPeriod(s)~~ :  
1968 and 1969.

State of New York  
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 21st day of December , 1976 , she served the within  
Notice of Decision by (certified) mail upon Eugene S. Greene

~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Eugene S. Greene  
21 Stuyvesant Oval  
New York, New York 10009

and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of the)~~  
~~xxxthe~~ petitioner herein and that the address set forth on said wrapper is the  
last known address of the ~~(representative of the)~~ petitioner.

Sworn to before me this

21st day of December , 1976

Bruce Batchelor

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU

STATE CAMPUS  
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

December 21, 1976

TELEPHONE: (518) **457-3830**

Mr. Eugene S. Greene  
21 Stuyvesant Oval  
New York, New York 10009

Dear Mr. Greene:

Please take notice of the **DECISION**  
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to  
Section(§) **722** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
from the date of this notice.

Inquiries concerning the computation of tax  
due or refund allowed in accordance with this  
decision or concerning any other matter relative  
hereto may be addressed to the undersigned. They  
will be referred to the proper party for reply.

Very truly yours,

**Frank J. Puccia**  
**Supervisor of Small**  
**Claims Hearings**

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative:

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
EUGENE S. GREENE : DECISION  
for Redetermination of a Deficiency or :  
for Refund of Unincorporated Business :  
Taxes under Article 23 of the Tax Law :  
for the Years 1968 and 1969. :  
:

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Petitioner, Eugene S. Greene, residing at 21 Stuyvesant Oval, New York, New York 10009, has filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1968 and 1969 (File No. 0-58655435).

A small claims hearing was held before Joseph A. Milack, Small Claims Hearing Officer, on July 17, 1976 at 2:45 p.m. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq. of counsel).

ISSUE

Whether petitioner, Eugene S. Greene's, business activities during the years 1968 and 1969 constitute the carrying on of an unincorporated business subject to unincorporated business tax pursuant to section 703 of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Eugene S. Greene, and his wife filed New York State income tax returns for the years 1968 and 1969. Petitioner did not file New York State unincorporated income tax returns for said years.

2. On November 24, 1965, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Eugene S. Greene, imposing unincorporated business tax upon the commissions received by him for his activities as a mutual fund salesman during the years 1968 and 1969. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency against him in the sum of \$795.15.

3. During the years 1968 and 1969, petitioner, Eugene S. Greene, was a mutual fund salesman engaged by Boro-Hall Investors Growth, Inc., Investors Growth Corporation and Jaffe Mutual Fund Agency, Inc. All three principals concurrently occupy the same office located at 90 John Street, New York, New York, and each is controlled by Shim Ben-Lev, president of each firm.

4. Petitioner, Eugene S. Greene, worked at the aforesaid office from 9:00 a.m. to 5:00 p.m., five days a week, with the exception of those days he was engaged in selling or assisting other salesmen. He was considered the office manager by Shim Ben-Lev and his duties included training new salesmen, assisting established salesmen for the purpose of increasing sales, and selling mutual funds. His principals provided a desk and secretarial help at the aforesaid office located at 90 John Street, New York, New York. He received all sales leads acquired by his principals, a privilege denied to the other salesmen engaged by his principals.

5. Petitioner, Eugene S. Greene, controlled his work schedule to the extent that it did not interfere with his responsibilities as office manager. He was required to notify Shim Ben-Lev of pending

vacations and other absences; although he was not expressly required to obtain advance approval.

6. Petitioner, Eugene S. Greene, received compensation on a commission basis; no income or social security taxes were withheld from the commission income he received.

7. Petitioner, Eugene S. Greene, was not reimbursed for expenses he incurred in the performance of his selling activities.

CONCLUSIONS OF LAW

A. That, although petitioner, Eugene S. Greene, was not reimbursed for his selling expenses and no income or social security taxes were withheld from his compensation, his three principals, acting jointly through Shim Ben-Lev, president of each firm, exercised sufficient direction and control to establish an employer-employee relationship.

B. That petitioner, Eugene S. Greene's, activities as a mutual fund salesman did not constitute the carrying on of an unincorporated business pursuant to section 703 of the Tax Law during the years 1968 and 1969.

C. That the petition of Eugene S. Greene is sustained.

DATED: Albany, New York  
December 21, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER